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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 388 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF KARNATAKA - THRO' CHIEF SECRETARY

Versus

ISHWARBHAI R GOHIL

Appearance:

1. Civil Revision Application No. 388 of 2003
MR UR BHATT, AGP for Petitioner No. 1-5
MR MAHENDRA K PATEL for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/01/2004

ORAL JUDGEMENT

Rule. Mr.M.K.Patel waives service of rule on
behalf of the respondent. With the consent of the
parties, the matter is taken up for final hearing today.

2) The petitioner-State of Karnataka has preferred this Civil Revision Application, challenging the order passed by the learned Judge, City Civil Court, Ahmedabad in Civil Misc.Application No.157/2002, by which the learned Judge has rejected the application filed by the petitioner-Judgement debtor in connection with setting aside the ex-parte decree. The learned Judge has not condoned the delay in filing such application for setting aside ex-parte decree and prayer for setting aside ex-parte decree was also rejected by his order at Exh.28. The learned Judge has rejected the said application even on merits.

3) The respondent herein has instituted a suit, being Civil Suit No.1205/1999, in the City Civil Court at Ahmedabad for getting decree on the basis of a lottery ticket issued by the State of Karnataka. The case of the plaintiff is that he has purchased a lottery ticket and as a successful lottery ticket holder, he was entitled to get certain amount of prize, which was not paid to him and therefore, he was entitled to recover certain amount as he got the prize on the aforesaid lottery ticket. Since the State of Karnataka was not paying the amount, he preferred the above suit. In the said suit, decree was passed ex-parte. According to the present petitioners, who were original defendants in the suit, the said decree was passed ex-parte, as, because of various reasons, they could not appear in the suit, though an advocate was engaged. Since there was a delay, a separate application was preferred for condoning the delay, as well as application was preferred for setting aside the ex-parte decree. The learned trial Judge by his order at Exh.1 in the said application, rejected the said application regarding condonation of delay in filing said application, and by a separate order below Exh.28, the prayer for setting aside ex-parte decree was rejected. Being aggrieved by the said order, the State of Karnataka and others have filed the present Civil Revision Application.

4) At the time of hearing of this Civil Revision Application, it was strenuously argued by Mr.Bhatt, learned AGP, that the original plaintiff has no case worth the name and that as per the documentary evidence, which they have got subsequently, which is in the nature of F.S.L. report, the ticket in question is not genuine and therefore, no decree should have been passed. The learned AGP has further stated that because of some genuine reasons, the State of Karnataka could not appear and defend the suit and sufficient cause was shown to the

trial court for condoning the delay in filing the application for setting aside the ex-parte decree and in the facts and circumstances of the case, the trial Court should have given an opportunity to defend the suit.

5) On the other hand, learned advocate Mr.Patel, after taking instructions from his client, who is present in the court, fairly stated that the original plaintiff has no objection if last opportunity is given to the present petitioners to defend the suit. He submitted that since the plaintiff was required to spend considerable amount in the litigation, cost of Rs.10,000/- may be awarded to the present respondent. The respondent-original plaintiff is an advocate and has agreed for setting aside the ex-parte decree. However, on behalf of the original plaintiff, it is requested that the suit may be ordered to be expedited. According to Mr.Patel, learned advocate for the respondent, the respondent-original plaintiff has a good case on merits and that the suit is of 1999 and therefore, the same may be ordered to be decided at the earliest.

6) Since the original plaintiff is agreeable for setting aside the ex-parte decree, it is not necessary to give any reasons for setting aside the impugned order of the trial Court. However, considering the facts and circumstances of the case, petitioners are directed to pay the cost of Rs.5,000/- to the respondent-original plaintiff, as the respondent is required to suffer for no fault on his part. It was expected from the petitioners - original defendants to be vigilant in defending the suit so that the respondent is not required to suffer in view of inaction on the part of the original defendants (present petitioners). Under these circumstances, the impugned orders below Exh.1 and Exh.28 in Civil Misc.Application No.157 of 2002 are quashed and set aside. Original suit, being Civil Suit No.1205 of 1999, is restored to the file of City Civil Court. The petitioners are directed to deposit cost of Rs.5,000/- in the trial Court. Mr.U.R.Bhatt, learned AGP, fairly conceded that the cost will be deposited on or before 25th February, 2004. On depositing the said cost, original plaintiff will be entitled to withdraw the same unconditionally. The defendants are directed to file written statement, if not filed in the original suit, latest by 1st March, 2004. Thereafter, the trial Court may proceed with the suit and the same may be decided as expeditiously as possible and in any case by 31st August, 2004.

7) Accordingly, the impugned orders passed below

Exh.1 and Exh.28 in Civil Misc.Application No.157 of 2002 are quashed and set aside and the suit is restored on the file of City Civil Court, Ahmedabad, and the same may be disposed of, as indicated above. Accordingly, rule is made absolute, with the cost of Rs.5,000/-, as indicated above. Writ to be sent to the trial Court forthwith.

(P.B.Majmudar, J.)

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